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Washington, DC 20529

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: EAC 04 046 50743 Office: VERMONT SERVICE CENTER Date: MAR 08 2006

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an instructor at the [redacted] Community Center, Boston, Massachusetts. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner does not qualify for classification as a member of the professions holding an advanced degree, and that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services (CIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The

> burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We note that 8 C.F.R. § 204.5(k)(4)(ii) states that, to apply for the exemption, the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate. The record does not contain this required document, and therefore the petitioner has not properly applied for the national interest waiver. The director, however, did not note this omission in the denial notice, and never issued a request for evidence to allow the petitioner to remedy the omission. We will, therefore, review the matter on the merits.

In a letter dated November 10, 2003, [redacted] chairperson of the [redacted] Community Center,[1] states:

> [redacted] Community . . . has made a significant contribution and continues to educate and support its members in managing their lives in the US as first generation immigrants, and raising and educating their children responsibly.
>
> [W]e have been searching to hire a knowledgeable person, with experience and skills to teach Ethiopian culture and language to children.
>
> As a result, it has come to our attention that [the petitioner], who fits our requirements with 33 year[s] of extensive teaching experience in elementary schools in Ethiopia . . . . is interested in helping the community. He is a good fit to teach moral, Ethiopian language and culture to our kids.

In his own letter, the petitioner states:

> The job offer I have received is . . . too attractive to ignore, because that is exactly what I have been doing in Ethiopia for thirty-three years. I was a teacher and a community leader.

[1] The center's seal, stamped on the bottom of the letter, reads [redacted] Community Center Boston."

> Moreover, having visited the different communities of the Ethiopian people here in Boston I see what is lacking, an experienced teacher who speaks and writes in Tigringa, Amharic and English. . . . Children need to be cultivated from early age. They need to be taught their heritage with the language of their country of origin so that they would have a solid identity with a strong moral background and a balanced judgment.

The director issued a request for evidence on January 28, 2005, stating that the petitioner must establish that he qualifies as a member of the professions holding an advanced degree, and that he "has had documented accomplishments that have had a substantial impact in the field of his specialty to a degree that would warrant the granting of a national interest waiver."

In response to this notice, the petitioner has stated:

> First and foremost, the academic education, training, seminars, upgrading and refreshing summer courses and workshops that I underwent coupled with the teaching experience that I accumulated in 33 years, if summed up and evaluated carefully, will turn out to be equivalent to having a master's degree or more (please refer to my enclosed C.V. for details). That means the academic degree requirement for the E21 classification with a request for a national interest waiver will be met also because of my knowledge of two Ethiopian languages, culture, heritage and moral discipline in teaching children. . . .
>
> I promise you that my employment will be of substantial intrinsic merit and national in scope, because after all, I will be teaching Americans.

8 C.F.R. § 204.5(k)(2) includes the following pertinent definitions:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
>
> *Profession* means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

Schoolteachers are listed in section 101(a)(32) of the Act, and therefore the petitioner's occupation qualifies as a profession. The petitioner must submit evidence to show that he holds an actual degree above a baccalaureate, or a baccalaureate degree followed by at least five years of progressive experience. The petitioner submits copies of two diplomas, each printed in both Amharic and English. The first diploma, dated July 3, 1969 (when the petitioner was 19 years old), reads:

[redacted] TEACHER TRAINING INSTITUTE
DIPLOMA
WE HEREBY CERTIFY THAT
[The petitioner]
having previously followed the course up to grade twelve in a recognized secondary school was admitted to this institute and has now satisfied all the requirements of the one year programme of academic studies and professional training qualifying for teaching in elementary schools.

The above diploma, therefore, represents one year of post-secondary education. This is not equivalent to a United States baccalaureate. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977).

Addis Ababa University issued the second diploma on February 17, 1987. This latter document is a "DIPLOMA (in Foreign Languages and Literature) /English/," but there is no indication of the level of study that the diploma represents, nor any transcript to show the length of study leading to this diploma. There is, therefore, no evidence that the 1987 diploma is at least the equivalent of a bachelor's degree.

The petitioner also completed a 30-day "Refresher and Upgrading Training Program in English" at Addis Ababa University in July 1998. As with the 1969 diploma, the completion of one refresher course is not equivalent to a four-year baccalaureate degree from a U.S. college or university.

By regulation, an alien cannot qualify as a member of the professions holding an advanced degree unless he or she holds, at a minimum, a degree that is equivalent to a U.S. baccalaureate. Without such a degree, employment experience cannot serve as the equivalent of an advanced degree, regardless of whether the alien has five or thirty years of experience. Only post-baccalaureate experience counts under the regulatory definition; with no bachelor's degree, none of the petitioner's experience is post-baccalaureate. (Even then, we note that the record contains no first-hand evidence of the petitioner's employment experience.)

Guish Tasew states, in a new letter:

> In regard to your office's request for the beneficiary's academic degree, our community is impressed with his experience in [the] teaching profession for a long period, ability to speak several languages, extensive knowledge of the Bible in different languages, and serving the community as a priest and a preacher. This multitasking ability of this individual makes him the best candidate for the role we are looking forward to offer him. Moreover, we strongly believe that he doesn't need to have a graduate degree to conduct the responsibility that the community is aspiring to entrust him with. This individual has a solid experience and educational achievement that could match a Master's Degree, and a cluster of skills that could not be matched by an academic degree in a specific field. . . .
>
> Hence, we strongly believe that the beneficiary's educational background, career and life experiences, writing skills, and gospel teaching, and his dedicated service for the well being

> of people and communities would outweigh . . . an academic masters degree in a specific area.

The director denied the petition on June 1, 2005, stating that the petitioner has not established eligibility for the classification sought. The director acknowledged the intrinsic merit of the petitioner's field of endeavor, but found that the petitioner's work lacks national scope and that the petitioner has not shown that it is in the national interest to ensure that he, rather than a different qualified worker, teaches Ethiopian languages and culture at [redacted] Community Center.

On appeal, the petitioner submits copies of previously submitted documents, as well as new letters from himself and one witness. The petitioner observes that an official of the [redacted] Community Center "stated that my lack of a Master's degree is compensated by my skills, experience, and multitasking ability." [redacted] executive director of the Ethiopian Community Mutual Assistance Association, Inc., in Cambridge, Massachusetts (near Boston), states that the petitioner's "multitasking ability and the respect he has in the community makes [sic] him the perfect candidate for the position the [redacted] Community Center is looking for."

Clearly the leaders of the [redacted] Community Center and other Ethiopian community organizations in the Boston area consider the petitioner to be amply qualified for the position. The Center's desire to hire the petitioner is, nevertheless, not the issue in this proceeding. The petitioner seeks an immigrant classification that is, by law, available only to aliens of exceptional ability and members of the professions holding an advanced degree. The petitioner has never set forth any coherent claim of exceptional ability, and therefore his petition can only be approved if he qualifies as a member of the professions holding an advanced degree. The petitioner and his intending employer have both effectively stipulated that the petitioner holds no such degree. Therefore, the petitioner does not qualify for the classification sought. This finding in no way prevents the [redacted] Community Center from seeking a labor certification and filing a petition on the beneficiary's behalf, seeking a more appropriate classification; but it remains that neither the petitioner nor his prospective employer has the discretion to set aside the fundamental legal requirements for the classification sought in the present proceeding.

The petitioner discusses the value of teaching the children of immigrants about their cultural heritage. The intrinsic merit of teaching about cultures and languages addresses only one prong of the national interest test; one does not automatically qualify for a national interest waiver simply because one teaches the children of immigrants.

Whatever the merits of the petitioner's occupation, the petitioner has not shown that his work has, or will, had a significant effect at a national level. Rather, the impact of his work is limited to the children of Ethiopian immigrants in the Boston area. The petitioner has not shown that his work at [redacted] Community Center would have any direct impact outside of the Ethiopian immigrant community in Boston. While education, as a whole, is in the national interest, the impact of a single teacher is generally so attenuated as to be negligible at the national level. *See Matter of New York State Dept. of Transportation* at 217, n.3. If an alien could qualify for a national interest waiver simply by claiming that someone, somewhere, stands to benefit from the

alien's activities, then the job offer requirement established by Congress would apply only to aliens whose work was of no benefit to anyone. We cannot accept such an interpretation of the law.

The petitioner contends that cultural education of the type he intends to offer reduces crime and otherwise improves living conditions in immigrant communities. The petitioner offers no support for this claim, nor does he show that he would be substantially more successful at such an endeavor than would other qualified workers. We note that all of the petitioner's teaching experience has been at schools in Ethiopia; he claims no work experience at all in the rather different context of teaching culture at a community center. The petitioner has not shown that his past efforts have significantly improved the lives of immigrant families even at a local level, much less nationally; his waiver claim rests on the untested assertion that he will excel at that task once he begins to do it.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.